

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

OCEAN TOMO, LLC,

Plaintiff-Counter Defendant,

v.

JONATHAN BARNEY and
PATENTRATINGS, LLC,

Defendant-Counter Plaintiffs.

No. 12 C 8450

Hon. Joan B. Gottschall

Magistrate Judge Mary M. Rowland

JOINT INITIAL STATUS REPORT

Plaintiff/Counter-Defendant Ocean Tomo (“OT”) and Defendants/Counter-Plaintiffs Jonathan Barney (“Barney”) and PatentRatings, LLC (“PatentRatings”) (collectively, “Defendants”), by and through their attorneys and pursuant to Magistrate Judge Mary M. Rowland’s Standing Order for Initial Status Reports, hereby submit their Joint Initial Status Report.

1. Summary of Claims Asserted.

OT’s First Amended and Supplemental Verified Complaint for Injunctive Relief, Declaratory Judgment, and Damages (“Complaint”) asserts claims for breach of contract, breach of fiduciary duty, violation of the Illinois Trade Secrets Act, violation of the Computer Fraud and Abuse Act (the “CFAA”), conversion, and tortious interference with prospective economic advantage arising out of Barney’s alleged destruction, copying, and use of OT’s confidential information and trade secrets, along with his and PatentRating’s alleged attempt to divert a business opportunity from OT. In its Complaint, OT also seeks a declaratory judgment that it is not tortiously interfering with Defendants’ business expectancy. OT originally filed its Complaint in the Circuit Court of Cook County, but Barney subsequently removed this case to the Northern District of Illinois.

After Barney removed this case to the Northern District of Illinois, Defendants filed their Answer and Counterclaims. In their Counterclaims, Defendants assert claims for breach of OT’s operating agreement, breach of the implied covenant of good faith and fair dealing, fraud stemming from allegedly false representations made by OT to Barney in order to induce him to enter into a license agreement and equity exchange agreement with OT, breach of contract arising from a license agreement between OT and PatentRatings, tortious interference with prospective economic advantage arising from OT’s alleged attempt to divert a business opportunity from Defendants, and violation of the CFAA stemming from OT’s alleged copying of confidential information contained on PatentRatings’ computer servers.

OT has moved to dismiss the following counts from Defendants' Counterclaims: breach of the operating agreement; breach of the implied covenant of good faith and fair dealing; fraud; and violation of the CFAA. Alternatively, OT has moved to compel arbitration on both the breach of contract claim and the breach of the implied covenant of good faith and fair dealing claim based on a dispute resolution provision contained in the operating agreement. When it filed its Motion to Dismiss, or in the alternative, Motion to Compel Arbitration ("Motion"), OT simultaneously answered the remaining counts of Defendants' Counterclaims. Defendants oppose the Motion. The parties have fully briefed OT's Motion, and Judge Joan B. Gottschall will issue a ruling by mail.

2. Statement of Relief Sought.

OT is seeking injunctive relief, compensatory damages to be determined at trial, attorneys' fees and costs, exemplary damages pursuant to 765 ILCS 1065/4(a), punitive damages, and a declaration that it is not tortiously interfering with Defendants' business expectancy.

Defendants are seeking compensatory damages in an amount to be determined at trial, punitive damages, attorneys' fees and costs, and an order compelling OT to provide Barney with access to the books and records of OT.

3. Description of Matter Referred to the Magistrate.

Pursuant to Local Rule 72.1, this case was referred to a magistrate judge for the purpose of holding proceedings relating to discovery supervision and settlement conference.

4. Briefing Status.

To date, there has been no briefing on the matters referred to the Magistrate.

5. Discovery Cut-off, Pre-trial Order, or Trial Date.

To date, no dates have been established for discovery cut-off, the pre-trial order, or trial.

6. Description of Discovery.

To date, no discovery has been completed in this case.

With respect to electronically stored information ("ESI"), the Parties will discuss issues relating to the collection and production of ESI and enter into a protocol governing the same.

7. Status of Settlement Negotiations.

There have not been any substantive settlement discussions among the Parties since the filing of the Counterclaim. The parties request a Settlement Conference before this Court at the earliest possible mutually convenient date.

OCEAN TOMO, LLC

JONATHAN BARNEY and
PATENTRATINGS, LLC

By: /s/Rachel T. Copenhaver

By: /s/David C. Layden w/permission

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CERTIFICATE OF SERVICE

I, Rachel T. Copenhaver, an attorney, hereby certify that on February 7, 2013, I caused to be electronically filed JOINT INITIAL STATUS REPORT with the Clerk of the Court using the Court's Case Management/Electronic Case Files (CM/ECF) system, which will send notifications of such filing to the following counsel of record:

David C. Layden

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/s/ Rachel T. Copenhaver